

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY


(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 14 OCT 2005

WIPO

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Applicant's or agent's file reference 100995-1 WO		<b>FOR FURTHER ACTION</b>		See Form PCT/PEA/416
International application No. PCT/SE2004/000486		International filing date (day/month/year) 30.03.2004	Priority date (day/month/year) 31.03.2003	
International Patent Classification (IPC) or national classification and IPC C12Q1/68				
Applicant ASTRAZENECA AB et al.				
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>				
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>				
Date of submission of the demand  07.10.2004		Date of completion of this report  13.10.2005		
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer  Brochado Garganta, M  Telephone No. +49 89 2399-8935		



**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/SE2004/000486

**Box No. I Basis of the report**

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
  - ☐ publication of the international application (under Rule 12.4)
  - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

**Description, Pages**

1-17 as published

**Claims, Numbers**

1-45 as published

**Drawings, Sheets**

1/5-5/5 as published

☒ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-45
Inventive step (IS)	Yes: Claims	
	No: Claims	1-45
Industrial applicability (IA)	Yes: Claims	1-45
	No: Claims	

2. Citations and explanations (Rule 70.7):

**see separate sheet**

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**Supplemental Box relating to Sequence Listing**

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**Continuation of Box I, item 2:**

1. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this report has been established on the basis of:
  - a. type of material:
    - ☒ a sequence listing
    - ☐ table(s) related to the sequence listing
  - b. format of material:
    - ☒ in written format
    - ☒ in computer readable form
  - c. time of filing/furnishing:
    - ☒ contained in the international application as filed
    - ☒ filed together with the international application in computer readable form
    - ☐ furnished subsequently to this Authority for the purposes of search and/or examination
    - ☐ received by this Authority as an amendment on
2. ☒ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
3. Additional observations, if necessary:

**Re Item V**

**Reasoned statement with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

1. Reference is made to the following documents:

D1: WO 00 37676 A1

D2: DATABASE WPI Derwent Publications Ltd., London, GB; Class B04, AN 1995-170454, XP002979234 & ZA 9 402 779 A (AMERICAN CYANIMID CO) 29 March 1995

2. Novelty

- 2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1-45 is not new in the sense of Article 33(2) PCT.

The subject-matter of claims 1, 2, 23 and 24, relating to methods that modulate or inhibit topoisomerase or gyrase activity, is already disclosed in document D1, which discloses methods for screening compounds for antibiotic or other biological activity, by measuring the level of expression of a reporter gene, wherein the compounds are incubated with aliquots of the cells

. Target genes for use in *B. subtilis* or other bacteria can be those involved in DNA replication, such as *dnaA*, *gyrA*, *lig(yerG)* or *topA*, B (see pages 2, 5, 6, 11 and 21).

The additional features of claims 3-22 and 25-45 are also known from D1 (see pages 3, 5, 6, 11, 19-21). Thus, these claims are also not novel (Article 33(2) PCT).

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(SEPARATE SHEET)**

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- 2.2 Document D2 is also considered to be relevant for the subject-matter of claims 1-45, with regard to novelty (Article 33(2) PCT), as it describes the detection of inhibitors of DNA gyrase which could be used as antibiotics (see abstract).
- 3.1 The use of general statements in the description which imply that the extent of protection may be expanded in some vague and not precisely defined way (use of the term "spirit of the invention" on page 17), is not allowable (Article 6 PCT; see Guidelines III-4.3.a).
- 3.2 References to "co-pending U.S. patent application serial numbers" (see page 1) should not be made. The corresponding publication number, provided the publication date was prior to the effective date of the present application, is to be given in such a case ; otherwise a pre-published family member application should be cited.